



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

FCP/147222

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**PRELIMINARY RECITALS**

Pursuant to a petition filed February 11, 2013, under Wis. Admin. Code § DHS 10.55, to review a decision by the Milwaukee County Department of Family Care - MCO in regard to Medical Assistance, a hearing was held on April 30, 2013, at Milwaukee, Wisconsin.

The issue for determination is whether the Milwaukee County Department of Family Care correctly terminated Petitioner's non-medical transportation; companion non-medical transportation and Supportive Home Care/Attendant Care services.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street  
Madison, Wisconsin 53703

By: Leah Veenendaal, Case Manager; Karen Gradecki, RN; Jenny Zurawski, RN  
Project Access, CMU  
Rosaida Schrank, QI Coordinator,  
Milwaukee County Department of Family Care - MCO  
901 N 9th St  
Milwaukee, WI 53233

**ADMINISTRATIVE LAW JUDGE:**

Mayumi M. Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. Petitioner (CARES # [REDACTED]) is a resident of Milwaukee County.

2. On January 30, 2012, a new Long Term Care Functional Screen (LTCFS) was done after Petitioner switched Care Management Units (CMUs) from Easter Seals, to Project Access. At this time, Petitioner reported that she was independent with all ADLs with the exception of occasionally having difficulty bathing herself on bad days. Petitioner reported using a shower chair. Petitioner also reported being independent with most IADLs, except that she needed assistance with shopping and transportation. At this time no issues with memory or cognition were noted. As a result, Petitioner was found to be at the non-nursing home level of care. (Exhibit 5, pgs. 9-15)
3. On January 29, 2013, the Milwaukee County Department of Family Care (MCDFC) sent Petitioner a Notice of Change in Level of Care, advising her that her level of care dropped to non-nursing home level of care. (Exhibit 1, pg. 2)
4. On January 31, 2013, MCDF sent Petitioner a Notice of Action indicating that effective February 15, 2013, it was terminating Non-Medical Care Transportation, Companion Non-Medical Care Transportation, Supportive Home Care and Attendant Care Services, because her level of care dropped to non-nursing home level of care. (Exhibit 2, pgs. 2 and 3)
5. Petitioner filed a request for fair hearing that was received by the Division of Hearings and Appeals on February 6, 2013. (See Exhibit 2)
6. Petitioner requested a rescreen, which was completed on March 28, 2013, which Petitioner indicated was a “bad day” for her, health wise. At this time, Petitioner reported being independent in all ADLs and demonstrated her ability to walk to her bathroom without her cane, get into her tub, sit on her shower chair, push herself up and get out of tub without assistance. Petitioner also reported being independent with her IADLs, except for needing assistance with grocery shopping, carrying her laundry basket and transportation. Consequently, Petitioner was again found to be at the non-nursing home level of care. (Exhibit 5, pgs. 23-29)

### DISCUSSION

The Family Care Program is a subprogram of Wisconsin’s Medical Assistance (MA) program and is intended to allow families to arrange for long-term community-based health care and support services for older or impaired family members without resort to institutionalization, *Wis. Stats.* §46.286; *Wis. Admin. Code* §DHS 10.11. The Family Care Long Term Care program (FCP) is a long-term care benefit for the elderly, people with physical disabilities and those with developmental disabilities. *Medicaid Eligibility Handbook (MEH)*, §29.1.

An individual, who meets the functional and financial requirements for Family Care, participates in Family Care by enrolling with a Care Management Organization (CMO), which, in turn, works with the participant and his/her family to develop an individualized plan of care. *See Wis. Stats.* §46.286(1) *and Wis. Admin. Code* §DHS 10.41. The CMO, in this case MCDFC, implements the plan by contracting with one or more service providers.

In the case at hand, Petitioner is disputing MCDFC’s decision to terminate non-medical transportation, companion non-medical transportation and supportive home care/attendant care services. It is MCDFC’s position that because Petitioner’s level of care dropped to non-nursing home level of care, that she no longer qualifies for those services.

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. *State v. Hanson*, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving the termination of services, the agency bears the burden to prove Petitioner no longer needs or is eligible for the services.

Petitioner's functional level of care was the subject of an appeal in case FCP/147221. It was determined that MCDFC correctly determined that Petitioner's functional level of care was at the non-nursing home level of care.

MCDFC uses a person's functional level of care to determine whether a service will be covered. A chart showing what services are covered for each level of care is contained in MCDFC's member handbook, which can be viewed on line at:

<http://www.familycaremilwaukeecounty.com/UserContent/DHS%20Approved%20Member%20Handbook%202012.pdf>

*See also Exhibit 4, pgs. 9 and 10*

This chart is based upon article VII, Section B and addendum XII, sections A and B of the standard MCO contract executed by the Department of Health Services. The contract can be viewed on-line at:

<http://www.dhs.wisconsin.gov/mltc/2013/2013Contract.htm>

The contract, like MCDFC's member handbook indicates that specialized transportation and supportive home care services are not included in the benefit package for individuals, like Petitioner, who are at the non-nursing home level of care.

### **CONCLUSIONS OF LAW**

MCDFC correctly terminated Petitioner's non-medical transportation, companion non-medical transportation and supportive home care/attendant care services.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

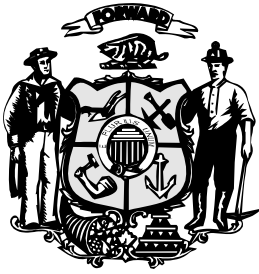
For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 6th day of May, 2013.

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\sMayumi M. Ishii  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on May 6, 2013.

Milw Cty Dept Family Care - MCO  
Office of Family Care Expansion